STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SWANSON, Minors.

UNPUBLISHED
May 21, 2013

No. 312972
Gogebic Circuit Court
Family Division
LC No. 2011-000022-NA

Before: SERVITTO, P.J., and WHITBECK and SHAPIRO, JJ.

PER CURIAM.

Respondent, mother[1] of minors A.S. and C.S., appeals as of right from the order of the family division of the circuit court terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (children will likely be harmed if returned). We affirm because respondent's due process rights were not violated and the trial court did not clearly err in finding that termination is in the children's best interests.

This case began in June 2011, when A.S., a toddler, was discovered outdoors unattended, dirty, shivering cold, and without shoes or socks. It was then discovered that respondent and the subject children were living with respondent's own mother, where the household was filthy with dog feces, but that even that home would not be long available to them because respondent's mother was upset that she was again pregnant.[2]

According to the evidence, respondent generally cooperated with her service plan and completed prescribed programs, and eventually obtained stable housing. But she resisted recommendations to obtain a mental-health assessment, and to seek counseling.

The various service providers all testified that on good days respondent was ready for the children and interacted well with and provided for them, but that there were at least as many bad days, where she was not available for visits at all, or was ill-disposed or otherwise unprepared for

[1] The father of A.S. voluntarily released his parental rights, and so is not participating in this appeal. The original petition listed a putative father for C.S., who was also named as a respondent in this case, but the trial court regarded C.S.'s father as simply unknown.

[2] She gave birth in January 2012 to a son, who is not at issue in this case.

time with the children. Respondent admitted that she had depended on her mother because she wanted to live the life of a teenager herself. She further admitted that she seriously considered releasing her parental rights to the subject children so that she could concentrate on her newborn son but demurred mostly out of fear of her mother's wrath. The witnesses consistently testified that respondent could follow instructions in the short run, but seemed to need constant reinstruction, had little ability to apply something learned for one situation to other applicable situations, and in fact doubted that she needed such assistance and instead cooperated mostly for show. There was also evidence that respondent had kept the children in dangerous proximity to aggressive dogs, and that the older child again wandered off unattended and was nearly hit by a car. Although respondent showed some general improvement in her parenting skills through the course of the case, her parent aide opined that at that pace respondent would need "[p]ossibly years" to develop satisfactory parenting skills.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 5.974(I). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Concerning the statutory bases for termination, the trial court noted that respondent obtained stable housing and was receiving support services in Wisconsin, but noted also that the witnesses described her as having as many bad days as good days, and tending to put herself first, acting like a responsible mother when wishing to create that impression, but needing "years" still to reach a satisfactory level of parenting. The court credited respondent with completing services other than those directed at her mental health, but concluded that "she did not benefit to such an extent as to rectify the conditions of neglect so she would engage in active parenting." The court continued,

> These children were harmed by her prior neglect. They were left in a filthy state, left in . . . the presence of large dogs, were undernourished and developmentally delayed. If she were to resume care with the "me first" attitude, or the philosophy that the children could care for themselves because she did, such harm could certainly recur. Already, there were instances of them wandering the street . . . and almost being hit by a car. Physical harm or even death could occur, as well as mental, emotional or developmental harm.

Respondent does not challenge the trial court's factual findings concerning the statutory grounds, but instead argues her due process rights were violated because petitioner "set her up to fail" by having early identified her emotional health as a barrier to reunification, but then failing to provide services to address the matter.

A parent's right to the care and custody of his or her child is recognized as an important liberty interest protected by due process. See *In re Brock*, 442 Mich 101, 109; 499 NW2d 752

(1993). Further, where a court has taken temporary jurisdiction over a child, reasonable efforts must be made to reunite the child with his or her natural parent or parents unless doing so would cause a substantial risk of harm to the child's physical or mental well being. *Tallman v Milton*, 192 Mich App 606, 614-615; 482 NW2d 187 (1992), citing MCL 712A.19a(4). In this case, there is no dispute that mental health issues were identified as among the barriers to reunification, but that there was no written provision for such services until the trial court ordered a mental-health assessment in March 2012, six months before the termination hearing. The trial court addressed this issue as follows:

> [Respondent] herself indicated that she would not have accepted such services and wanted to choose a counselor she was comfortable with. She basically avoided an assessment and when it was done in Wisconsin, did not supply it to Michigan DHS, which the Court believes was purposeful. As indicated by [her foster care worker], she seemed to hope they would just "go away." They did not. Even if offered, this Court concludes she would not avail herself of the services.

These findings were well-supported by the evidence. The foster care worker testified that she had encouraged respondent to seek services for her mental health from the beginning, but that respondent initially rebuffed the suggestion on the grounds that she felt no need for them and preferred to follow her own initiative in such matters, and held to that position over repeated recommendations. The foster care worker further testified that when the trial court ordered such services in March 2012, respondent resisted getting a mental-health assessment until just ahead of the last review hearing, and even then respondent never shared the result. The foster care worker added that respondent was consistently advised to seek counseling, but had never done so.

Because the evidence supported the conclusion that respondent willfully avoiding involvement in mental health services for the whole time petitioner and the court were involved in her situation, we must reject her argument that such services were wrongfully withheld from her.

Respondent also argues that she needed more time to develop proper parenting skills, and that the decision to terminate her rights was premature for that reason. However, "the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991), citing MCL 712A.19b(3)(c)(*i*).

Concerning the children's best interests, respondent argues that the court failed to appreciate that the evidence showed that the bond between respondent and the children improved while this case was in progress, and also that the older child exhibited behavior problems such that respondent needed additional education and support to parent her. However, improved bonding alone is not enough to show that the court erred in regarding termination as being in the children's best interests, when balanced against the court's findings that respondent had seriously neglected and endangered the children, did not appreciate that she needed to improve, tended to put her own concerns above the needs of the children, and was generally resistant to improving

her situation. Moreover, we regard the older child's special needs as militating against continuing to experiment with that parent-child relationship.

For these reasons, respondent has failed to show that the trial court clearly erred in concluding that the statutory bases for termination were proved on clear and convincing evidence, and that termination was in the children's best interests.

Affirmed.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro